

STANDARD STUDENT DATA PRIVACY AGREEMENT

(NDPA Standard Version 1.0/Vendor Modified etc.)

SOUTHWEST VERMONT SUPERVISORY UNION

and

CK-12 Foundation

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This Student Data Privacy Agreement (“**DPA**”) is entered into on the date of full execution (the “**Effective Date**”) and is entered into by and between:

SOUTHWEST VERMONT SUPERVISORY UNION, located at 246 South Stream Road, Bennington, VT 05201 (the “**Local Education Agency**” or “**LEA**”) and
CK-12 Foundation, located at 2300 Geng Road, Suite 150, Palo Alto, CA (the “**Provider**”).

WHEREAS, the Provider is providing educational or digital services to LEA.

WHEREAS, the Provider and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. § 1232g (34 CFR Part 99); the Children’s Online Privacy Protection Act (“**COPPA**”) at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations and

WHEREAS, the Provider and LEA desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

NOW THEREFORE, for good and valuable consideration, LEA and Provider agree as follows:

1. A description of the Services to be provided, the categories of Student Data that may be provided by LEA to Provider, and other information specific to this DPA are contained in the Standard Clauses hereto.

2. Special Provisions. Check if Required

If checked, the Supplemental State Terms and attached hereto as **Exhibit “G”** are hereby incorporated by reference into this DPA in their entirety.

- ✓ If checked, LEA and Provider agree to the additional terms or modifications set forth in **Exhibit “H”**. (Optional)
- ✓ If Checked, the Provider, has signed **Exhibit “E”** to the Standard Clauses, otherwise known as General Offer of Privacy Terms

3. In the event of a conflict between the Student Data Privacy Consortium (SDPC) Standard Clauses, defined as Articles I-VII in this DPA, the State or Special Provisions will control. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.
4. This DPA shall stay in effect for three years. Exhibit E will expire 3 years from the date the original DPA was signed.
5. The services to be provided by Provider to LEA pursuant to this DPA are detailed in **Exhibit “A”** (the “**Services**”).
6. **Notices**. All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or first-class mail, sent to the designated representatives below.

The designated representative for the Provider for this DPA is:

Name: Miral Shah Title: Chief Technology Officer

Address: 2300 Geng Road, Ste 150, Palo Alto, CA 94303

Phone: 650-494-1302 Email: dpo@ck12.org

The designated representative for the LEA for this DPA is:

Name: Melissa Senecal Title: Director of Curr, Ins + Assessment

Address: 246 South Stream Rd. Bennington, VT 05201

Phone: 802 753 5815 Email: melissa.senecal@svsu.org

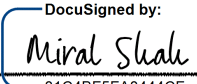
IN WITNESS WHEREOF, LEA and Provider execute this DPA as of the Effective Date.

LEA [School District Name]

By: Southwest Vermont SU Date: 11/18/21

Printed Name: Melissa Senecal Title/Position: Director of Curr, Inst. & Assess.

CK-12 Foundation

By:  Date: 12/2/2021

Printed Name: Miral Shah Title/Position: Chief Technology Officer

SDPC STANDARD CLAUSES

Version 3.0

ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA**. The purpose of this DPA is to describe the duties and responsibilities to protect Student Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. Provider shall be under the direct control and supervision of the LEA, with respect to its use of Student Data
2. **Student Data to Be Provided**. In order to perform the Services described above, LEA shall provide Student Data as identified in the Schedule of Data, attached hereto as **Exhibit "B"**.
3. **DPA Definitions**. The definition of terms used in this DPA is found in **Exhibit "C"**. In the event of a conflict, definitions used in this DPA shall prevail over terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA**. All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement, shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEA as it pertains to the use of Student Data, notwithstanding the above.
2. **Parent Access**. To the extent required by law the LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Student Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for an LEA to respond to a parent or student, whichever is sooner) to the LEA's request for Student Data in a student's records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account**. If Student-Generated Content is stored or maintained by the Provider,

Provider shall, at the request of the LEA, transfer, or provide a mechanism for the LEA to transfer, said Student- Generated Content to a separate account created by the student.

4. **Law Enforcement Requests.** Should law enforcement or other government entities (“Requesting Party(ies)”) contact Provider with a request for Student Data held by the Provider pursuant to the Services, the Provider shall notify the LEA in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the LEA of the request.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner no less stringent than the terms of this DPA.

ARTICLE III: DUTIES OF LEA

1. **Provide Data in Compliance with Applicable Laws.** LEA shall provide Student Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights.** If the LEA has a policy of disclosing Education Records and/or Student Data under FERPA (34 CFR § 99.31(a)(1)), LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.
3. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Student Data.
4. **Unauthorized Access Notification.** LEA shall notify Provider promptly of any known unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security, all as may be amended from time to time.
2. **Authorized Use.** The Student Data shared pursuant to this Service Agreement (as defined in Exhibit H), including persistent unique identifiers, shall be used for no purpose other than the Services outlined in Exhibit A or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA.
3. **Provider Employee Obligation.** Provider shall require all of Provider’s employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with

respect to the Student Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the Service Agreement.

4. **No Disclosure.** Provider acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, user content or other non-public information and/or personally identifiable information contained in the Student Data other than as directed or permitted by the LEA or this DPA. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information, Student Data disclosed pursuant to a lawfully issued subpoena or other legal process, or to subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Student Data to any third party.
5. **De-Identified Data:** Provider agrees not to attempt to re-identify de-identified Student Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes:
 - (1) assisting the LEA or other governmental agencies in conducting research and other studies; and
 - (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and
 - (3) for adaptive learning purpose and for customized student learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by LEA to return or destroy Student Data. Except for Subprocessors, Provider agrees not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the LEA who has provided prior written consent for such transfer. Prior to publishing any document that names the LEA explicitly or indirectly, the Provider shall obtain the LEA's written approval of the manner in which de-identified data is presented.
6. **Disposition of Data.** Upon written request from the LEA, Provider shall dispose of or provide a mechanism for the LEA to transfer Student Data obtained under the Service Agreement, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the LEA is received, Provider shall dispose of all Student Data after providing the LEA with reasonable prior notice. The duty to dispose of Student Data shall not extend to Student Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The LEA may employ a "Directive for Disposition of Data" form, a copy of which is attached hereto as **Exhibit "D"**. If the LEA and Provider employ Exhibit "D," no further written request or notice is required on the part of either party prior to the disposition of Student Data described in Exhibit "D."
7. **Advertising Limitations.** Provider is prohibited from using, disclosing, or selling Student Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to LEA. This section does not prohibit Provider from using Student Data (i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product recommendations to teachers or LEA employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits.

ARTICLE V: DATA PROVISIONS

1. **Data Storage.** Where required by applicable law, Student Data shall be stored within the United States. Upon request of the LEA, Provider will provide a list of the locations where Student Data is stored.
2. **Audits.** No more than once a year, or following unauthorized access, upon receipt of a written request from the LEA with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of Student Data or any portion thereof as it pertains to the delivery of services to the LEA . The Provider will cooperate reasonably with the LEA and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA, and shall provide reasonable access to the Provider's facilities, staff, agents and LEA's Student Data and all records pertaining to the Provider, LEA and delivery of Services to the LEA. Failure to reasonably cooperate shall be deemed a material breach of the DPA.
3. **Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the nationally recognized standards set forth in **Exhibit "F"**. Exclusions, variations, or exemptions to the identified Cybersecurity Framework must be detailed in an attachment to **Exhibit "H"**. Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit "F"**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who LEA may contact if there are any data security concerns or questions.
4. **Data Breach.** In the event of an unauthorized release, disclosure or acquisition of Student Data that compromises the security, confidentiality or integrity of the Student Data maintained by the Provider the Provider shall provide notification to LEA within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:
 - (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
 - i. The name and contact information of the reporting LEA subject to this section.
 - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - iii. If the information is possible to determine at the time the notice is provided, then either
 - (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of

the notice.

- iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and
 - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- (2) Provider agrees to adhere to all federal and state requirements with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
 - (3) Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a summary of said written incident response plan.
 - (4) LEA shall provide notice and facts surrounding the breach to the affected students, parents or guardians.
 - (5) In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

ARTICLE VI: GENERAL OFFER OF TERMS

Provider may, by signing the attached form of "General Offer of Privacy Terms" (General Offer, attached hereto as **Exhibit "E"**), be bound by the terms of **Exhibit "E"** to any other LEA who signs the acceptance on said Exhibit. The form is limited by the terms and conditions described therein.

ARTICLE VII: MISCELLANEOUS

1. **Termination.** In the event that either Party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. Either party may terminate this DPA and any service agreement or contract if the other party breaches any terms of this DPA.
2. **Effect of Termination Survival.** If this DPA is terminated, the Provider shall destroy all of LEA's Student Data pursuant to Article IV, section 6.
3. **Priority of Agreements.** This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license

agreement, or writing, the terms of this DPA shall apply and take precedence. In the event of a conflict between Exhibit H, the SDPC Standard Clauses, and/or the Supplemental State Terms, Exhibit H will control, followed by the Supplemental State Terms. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.

4. **Entire Agreement.** This DPA and the Service Agreement constitute the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the Parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
5. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
6. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF THE LEA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY OF THE LEA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.
7. **Successors Bound:** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the LEA no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Student Data within the Service Agreement. The LEA has the authority to terminate this DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
8. **Authority.** Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to

the Student Data and/or any portion thereof.

9. **Waiver**. No delay or omission by either party to exercise any right hereunder shall be construed as a waiver of any such right and both parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient.

EXHIBIT "A"
DESCRIPTION OF SERVICES

CK-12 provides lessons in STEM and other subject areas and allows teachers to compile and share custom digital assessments, text, and other learning modalities. By assigning CK-12 resources through CK-12 Classes or an integrated learning management system, students can complete work and teachers can see insights and student progress. Additionally, students are able to use the CK-12 platform to fill in gaps and challenge themselves beyond individual assignments. (the "Services")

EXHIBIT "B"
SCHEDULE OF DATA

Category of Data	Elements	Used by Your System
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	yes
	Other application technology meta data-Please specify:	
Application Use Statistics	Meta data on user interaction with application	yes
Assessment	Standardized test scores	no
	Observation data	no
	Other assessment data-Please specify:	data from CK-12 practice & learning modalities
Attendance	Student school (daily) attendance data	no
	Student class attendance data	no
Communications	Online communications captured (emails, blog entries)	Cafe/Q&A/chatbot (not required)
Conduct	Conduct or behavioral data	no
Demographics	Date of Birth	yes
	Place of Birth	no
	Gender	no
	Ethnicity or race	no
	Language information (native, or primary language spoken by student)	no
	Other demographic information-Please specify:	city/state/school (not required)
Enrollment	Student school enrollment	yes
	Student grade level	yes
	Homeroom	no

	Guidance counselor	no
Category of Data	Elements	Used by Your System
Enrollment	Specific curriculum programs	no
	Year of graduation	no
	Other enrollment information-Please specify:	no
Parent/Guardian Contact Information	Address	no
	Email	yes (for under 13)
	Phone	no
Parent/Guardian ID	Parent ID number (created to link parents to students)	no
Parent/Guardian Name	First and/or Last	no
Schedule	Student scheduled courses	no
	Teacher names	not as part of a schedule
Special Indicator	English language learner information	no
	Low income status	no
	Medical alerts/ health data	no
	Student disability information	no
	Specialized education services (IEP or 504)	no
	Living situations (homeless/foster care)	no
	Other indicator information-Please specify:	no
Student Contact Information	Address	no
	Email	yes (not required)
	Phone	no
Student Identifiers	Local (School district) ID number	no
	State ID number	no

	Provider/App assigned student ID number	yes
Category of Data	Elements	Used by Your System
Student Identifiers	Student app username	yes
	Student app passwords	yes
Student Name	First and/or Last	yes (not required)
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	yes - student performance on questions and interactions with learning modalities
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	no
Student Survey Responses	Student responses to surveys or questionnaires	yes
Student work	Student generated content; writing, pictures, etc.	yes
	Other student work data -Please specify:	N/A
Transcript	Student course grades	no
	Student course data	no
	Student course grades/ performance scores	no
	Other transcript data - Please specify:	no
Transportation	Student bus assignment	no
	Student pick up and/or drop off location	no
	Student bus card ID number	no
	Other transportation data – Please specify:	no
Other	Please list each additional data element used, stored, or collected by your application:	
None	No Student Data collected at this time. Provider will immediately notify LEA if this	

	designation is no longer applicable.	
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EXHIBIT “C” **DEFINITIONS**

De-Identified Data and De-Identification: Records and information are considered to be de-identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student’s identity is not personally identifiable, taking into account reasonable available information.

Educational Records: Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such school or local education agency, including but not limited to, records encompassing all the material kept in the student’s cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

Metadata: means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

Operator: means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with an LEA to provide a service to that LEA shall be considered an “operator” for the purposes of this section.

Originating LEA: An LEA who originally executes this DPA in its entirety with the Provider.

Provider: For purposes of this DPA, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Student Data. Within this DPA the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

Student Generated Content: The term “student-generated content” means materials or content created by a student in the services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

School Official: For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of Student Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re- disclosure of personally identifiable information from Education Records.

Service Agreement: Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

Student Data: Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Student Data includes Metadata. Student Data further includes "personally identifiable information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Student Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Student Data as specified in Exhibit "B" is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services.

Subprocessor: For the purposes of this DPA, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to Student Data.

Subscribing LEA: An LEA that was not party to the original Service Agreement and who accepts the Provider's General Offer of Privacy Terms.

Targeted Advertising: means presenting an advertisement to a student where the selection of the advertisement is based on Student Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "

Targeted advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

Third Party: The term "Third Party" means a provider of digital educational software or services, including cloud- based services, for the digital storage, management, and retrieval of Education Records and/or Student Data, as that term is used in some state statutes. However, for the purpose of this DPA, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

EXHIBIT "D"
DIRECTIVE FOR DISPOSITION OF DATA

[Insert Name of District or LEA] Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

___Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

[Insert categories of data here]

___Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

___Disposition shall be by destruction or deletion of data.

___Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions]

3. Schedule of Disposition

Data shall be disposed of by the following date:

___As soon as commercially practicable.

___By **[Insert Date]** - (No less than 30 days after the Provider receives this request.)

4. Signature

Authorized Representative of LEA

Date

5. Verification of Disposition of Data

Authorized Representative of Company

Date

DESIGNATED REPRESENTATIVE OF LEA:

Name: _____

Title: _____

Address: _____

Telephone Number: _____

Email: _____

EXHIBIT “F”
DATA SECURITY REQUIREMENTS

Adequate Cybersecurity Frameworks
2/24/2020

The Education Security and Privacy Exchange (“Edspex”) works in partnership with the Student Data Privacy Consortium and industry leaders to maintain a list of known and credible cybersecurity frameworks which can protect digital learning ecosystems chosen based on a set of guiding cybersecurity principles* (“Cybersecurity Frameworks”) that may be utilized by Provider .

Cybersecurity Frameworks

	MAINTAINING ORGANIZATION/GROUP	FRAMEWORK(S)
X	National Institute of Standards and Technology	NIST Cybersecurity Framework Version 1.1
	National Institute of Standards and Technology	NIST SP 800-53, Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), Special Publication 800-171
	International Standards Organization	Information technology — Security techniques — Information security management systems (ISO 27000 series)
	Secure Controls Framework Council, LLC	Security Controls Framework (SCF)
	Center for Internet Security	CIS Critical Security Controls (CSC, CIS Top 20)
	Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S))	Cybersecurity Maturity Model Certification (CMMC, ~FAR/DFAR)

Please visit <http://www.edspex.org> for further details about the noted frameworks.

*Cybersecurity Principles used to choose the Cybersecurity Frameworks are located here

EXHIBIT “G” – Supplemental SDPC State Terms for Vermont
Version _____

[The State Supplement is an ***optional*** set of terms that will be generated on an as-needed basis in collaboration between the national SDPC legal working group and the State Consortia. The scope of these State Supplements will be to address any state specific data privacy statutes and their requirements to the extent that they require terms in addition to or different from the National Standard Clauses. The State Supplements will be written in a manner such that they will not be edited/updated by individual parties and will be posted on the SDPC website to provide the authoritative version of the terms. Any changes by LEAs or Providers will be made in amendment form in an Exhibit (**Exhibit “H”** in this proposed structure).]

LEA did not specify terms for Exhibit G.

EXHIBIT “H” – Additional Terms or Modifications

Version _____

LEA and Provider agree to the following additional terms and modifications which shall supercede any of the terms previously defined in this DPA :

The parties agree that this DPA and the exhibits attached hereto supersede and replace any previous agreements or contracts between the parties.

Domain(s) Restriction

This DPA covers only student accounts sanctioned by the LEA and set up through the @apps.svsu.org domain(s) for this originating district or the noted domain(s) in Exhibit “E” for subscribing districts within the same state.

Terms of Use as Service Agreement

For this DPA, the “Service Agreement” shall be defined as the CK-12 Terms of Use (dated February 16, 2021) and defined as “Exhibit I.”

Student Generated Content

For the avoidance of doubt, it is expressly understood and agreed that Student Generated Content, defined as “User Content” in the CK-12 Terms of Use, “Exhibit I,” does not fall under “Educational Records” and is subject to the license noted in “Exhibit I,” not that of other protected “Student Data.”

De-Identified Data

The following paragraph shall replace Article IV, section 5.

De-Identified Data: Provider agrees not to attempt to re-identify de-identified Student Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes:

- (1) assisting the LEA or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive learning purpose and for customized student learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by LEA to return or destroy Student Data. Except for Subprocessors, Provider agrees not to transfer de-identified Student Data to any party unless that party agrees in writing not to attempt re-identification.

Audits

The following paragraph shall replace Article V, section 2.

At least once a year, except in the case of a verified breach, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of the Student Record or any portion thereof, subject to reasonable time and manner restrictions. The Provider will provide reasonable access to cooperate reasonably with the LEA and any state or federal

agency with oversight authority/jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA.

Data Breach

The following paragraph shall replace the opening paragraph of Article V, section 4. (Subsections 1-5) remain in effect.

In the event of an unauthorized release, disclosure or acquisition of Student Data that compromises the security, confidentiality or integrity of the Student Data maintained by the Provider the Provider shall provide notification to LEA within thirty (30) days of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:

Termination

This DPA is effective as of the Effective Date specified in the opening paragraph and shall continue until terminated by either party by giving at least 30 days written notice.

Within thirty (30) calendar days after the termination of this DPA, all Student Data, with the exception of Student Generated Content as licensed under "Exhibit I," will be de-identified and/or deleted from Provider's computer systems, based on written request from the District.

**EXHIBIT “I”
CK-12 TERMS OF USE (February 16, 2021)**

Welcome, and thank you for your interest in the CK-12 Foundation (“**CK-12**,” “**we**,” or “**us**”) and our websites at ck12.org and ck12info.org, along with our related websites, networks, applications, mobile applications, content and other services provided by us (collectively, the “**Platform**”). These Terms of Use are a legally binding contract between you and CK-12 regarding your use of the Platform.

PLEASE READ THE FOLLOWING TERMS CAREFULLY:

BY CLICKING “I ACCEPT,” OR BY OTHERWISE ACCESSING OR USING THE PLATFORM, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE PLATFORM, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING CK-12’S [PRIVACY POLICY](#), [CK-12’S DMCA NOTICE](#), AND THE [CK-12 CURRICULUM MATERIALS LICENSE](#) (TOGETHER, THESE “**TERMS**”). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE PLATFORM. YOUR USE OF THE PLATFORM, AND CK-12’S PROVISION OF THE PLATFORM TO YOU, CONSTITUTES AN AGREEMENT BY CK-12 AND BY YOU TO BE BOUND BY THESE TERMS.

ARBITRATION NOTICE. Except for certain kinds of disputes described in Section 16, you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND CK-12 ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 16.)

1. **CK-12 Platform Overview.** CK-12 was founded with the mission to enable everyone to learn in his or her own way. To that end, CK-12 has developed a variety of content and related services in order to assist teachers and parents with teaching their students and children, and for students to aid them in learning, and has made such content and services available via the Platform.
2. **Eligibility.** By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18-years old or have your parent or guardian’s consent to agree to these Terms; (b) you have not previously been suspended or removed from the Platform; and (c) your registration and your use of the Platform is in compliance with any and all applicable laws and regulations. If you are an entity, organization, or company, the individual accepting these Terms on your behalf represents and warrants that they have authority to bind you to these Terms and you agree to be bound by these Terms.
3. **Accounts and Registration.** To access some features of the Platform, you may be required to register for an account. When you register for an account, you may be required to provide us with some information about yourself, such as your name, email address, or other contact information. You agree that the information you provide to us is accurate and that you will keep it accurate and up to date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password, and you accept responsibility for all activities that occur under your account. If you believe that your account is no longer secure, then you must immediately notify us at support@ck12.org.

4. Licenses

- 4.1 **Platform License.** Subject to your complete and ongoing compliance with these Terms, and subject to Section 6 below, CK-12 grants you, a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Platform to obtain information and educational materials solely as follows:
 - (a) **If you are a student**, for your own education.
 - (b) **If you are a parent or guardian**, to educate your children or wards.
 - (c) **If you are a teacher, non-profit educational institution (including schools) or school district**, to educate your students.
 - (d) **If you are an individual tutor**, to provide tutoring services to students provided that (1) you are not employed by a third party to provide tutoring services on their behalf, and (2) you provide feedback to CK-12 regarding the Curriculum Materials and/or Platform to improve student outcomes at feedback@ck12.org.
collectively, (“**Educational Purposes**”).
- 4.2 **Prohibited Use.** You may not access or use the Platform or any CK-12 Curriculum Materials for any purposes other than for Educational Purposes. This includes, by way of example and not limitation: (a) for any commercial purposes (unless you are an individual tutor [not employed by a third party for such tutoring purposes](#)); (b) in order to build or train artificial intelligence or machine learning algorithms or models; (c) if you are an aggregator of content, to obtain educational materials to distribute through your own online or offline services; or (d) if you are a for-profit educational institution or multi-tutor tutoring business, as part of your educational offerings, whether such offerings are for free or for a fee. If you wish to use or Distribute the CK-12 Foundation Curriculum Materials for non-Educational Purposes, you must obtain the

express written permission of the CK-12 Foundation. To request permission, please contact the CK-12 Foundation at legal@ck12.org.

- 4.3 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law or as otherwise permitted herein, you may not: (a) reproduce or distribute the Platform; (b) publicly display or publicly perform the platform except as necessary in connection with Educational Purposes; (c) make modifications to the Platform; or (d) interfere with or circumvent any feature of the Platform, including any security or access control mechanism. If you are prohibited under applicable law from using the Platform, you may not use it.
- 4.4 **Licensed Photos.** Certain photos, images or other Materials available on or through the Platform have been licensed by CK-12 from Shutterstock.com, Getty Images, or other commercial stock photo or image agencies (each a "**Licensed Stock Photo**"). You are allowed to retain a copy of a Licensed Stock Photo for your personal, non-commercial use, as specified in this Section 4. Notwithstanding anything to the contrary herein and subject to Section 4.1 of these Terms, you may not: (a) modify, alter, adapt or otherwise create any derivative work of a Licensed Stock Photo, and (b) you may not distribute, transmit, or disseminate a Licensed Stock Photo or any copy or derivative work thereof, to any third party. Further, you may not sublicense, assign, or make available for resale any printed copy of a Licensed Stock Photo provided by Shutterstock.com or any Materials, CK-12 Curriculum Materials, or User Content containing a Licensed Stock Photo provided by Shutterstock.com.
- 4.5 **Feedback.** If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Platform ("**Feedback**"), then you hereby grant CK-12 an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner or medium, whether now known or hereafter developed, and for any purpose, including to improve the Platform and create other products and services, in CK-12's sole discretion. CK-12 is not obligated to provide you with any attribution for any Feedback.
5. **Ownership; Proprietary Rights.** The Platform is owned and operated by CK-12. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Platform ("**Materials**") provided by CK-12, as well as the names "CK-12" and "CK12" and associated logos and the terms Flexbook® and Flexbook® Platform, are protected by intellectual property and other laws. All Materials included in the Platform are the property of CK-12 or its third-party licensors. Except as expressly authorized by CK-12, you may not make use of the Materials. CK-12 reserves all rights to the Materials not granted expressly in these Terms.
6. **CK-12 Curriculum Materials.** Notwithstanding the rights granted in Section 4.1, unless otherwise agreed by CK-12 in writing, your use of any CK-12 curriculum materials, course materials, textbooks, teaching guides, study guides, tests, practice materials, or other similar materials made available to you by CK-12 whether or not via the Platform ("**CK-12 Curriculum Materials**"), will be subject to the terms and conditions of the [CK-12 Curriculum Materials License](#) ("**CK-12 Curriculum Materials License**") which is hereby incorporated by reference into these Terms.
7. **Third-Party Terms**
- 7.1 **Third-Party Services and Linked Websites.** CK-12 may provide tools through the Platform that enable you to export information, including User Content (defined below), to third-party services. By using one of these tools, you agree that CK-12 may transfer that information to the applicable third-party service. Third-party services are not under CK-12's control, and, to the fullest extent permitted by law, CK-12 is not responsible for any third-party service's use of your exported information. The Platform may also contain links to

third-party websites. Linked websites are not under CK-12's control, and CK-12 is not responsible for their content.

7.2 Third-Party Software. The Platform may include or incorporate third-party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components ("**Third-Party Components**"). Although the Platform is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining Third-Party Components under the applicable third-party licenses or to limit your use of Third-Party Components under those third-party licenses.

8. User Content

8.1 User Content Generally. Certain features of the Platform may permit users to upload content to the Platform, including messages, reviews, photos, videos, images, folders, data, text, and other types of works ("**User Content**") and to publish User Content on the Platform. You retain any copyright and other proprietary rights that you may hold in the User Content that you post to the Platform.

8.2 Limited License Grant to CK-12. By providing User Content to or via the Platform, you grant CK-12 a perpetual, worldwide, non-exclusive, irrevocable, royalty-free, fully paid right and license (with the right to sublicense) to host, store, transfer, publicly display and publicly perform (in each instance on a through to the user or viewer basis), reproduce, modify, distribute, or otherwise use and exploit your User Content, in whole or in part, in any media formats and through any media channels now known or hereafter developed.

8.3 Limited License Grant to Other Users. By providing User Content to or via the Platform to other users of the Platform, you grant those users a non-exclusive license to access and use that User Content as permitted by these Terms and the functionality of the Platform.

8.4 User Content Representations and Warranties. CK-12 disclaims any and all liability in connection with User Content. You are solely responsible for your User Content and the consequences of providing User Content via the Platform. By providing User Content via the Platform, you affirm, represent, and warrant to us that:

- (a) you are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize CK-12 and users of the Platform to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section, in the manner contemplated by CK-12, the Platform, and these Terms;
- (b) your User Content, and the use of your User Content as contemplated by these Terms, does not and will not: (i) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; (iii) cause CK-12 to violate any law or regulation; or (iv) require CK-12 to obtain any other licenses, permissions, authorizations, or consents from or pay any royalties or other amounts to any third parties; and
- (c) your User Content could not be deemed by a reasonable person to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate.

8.5 User Content Disclaimer. We are under no obligation to edit or control User Content that you or other users post or publish and will not be in any way responsible or liable for User Content. CK-12 may, however,

at any time and without prior notice, screen, remove, edit, or block any User Content that in our sole judgment violates these Terms or is otherwise objectionable. You understand that, when using the Platform, you will be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent, or objectionable. You agree to waive, and do waive, any legal or equitable right or remedy you have or may have against CK-12 with respect to User Content. If notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. For clarity, CK-12 does not permit copyright-infringing activities on the Platform.

8.6 Monitoring Content. CK-12 does not control and does not have any obligation to monitor: (a) User Content; (b) any content made available by third parties; or (c) the use of the Platform by its users. You acknowledge and agree that CK-12 reserves the right to, and may from time to time, monitor any and all information transmitted or received through the Platform for operational and other purposes. If at any time CK-12 chooses to monitor the content, CK-12 still assumes no responsibility or liability for content or any loss or damage incurred as a result of the use of content. During monitoring, information may be examined, recorded, copied, and used in accordance with our Privacy Policy (defined below).

9. Communications. We may send you emails concerning our products and services. You may opt out of promotional emails by following the unsubscribe instructions in the promotional email itself.

10. Prohibited Conduct. BY USING THE PLATFORM, YOU AGREE NOT TO:

- (a) use the Platform for any illegal purpose or in violation of any local, state, national, or international law;
- (b) harass, threaten, demean, embarrass, bully, or otherwise harm any other user of the Platform;
- (c) violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third-party intellectual property right;
- (d) interfere with security-related features of the Platform, including by: (i) disabling or circumventing features that prevent or limit use or copying of any content; or (ii) reverse engineering or otherwise attempting to discover the source code of any portion of the Platform except to the extent that the activity is expressly permitted by applicable law;
- (e) interfere with the operation of the Platform or any user's enjoyment of the Platform, including by: (i) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (ii) making any unsolicited offer or advertisement to another user of the Platform; (iii) collecting personal information about another user or third party without consent; or (iv) interfering with or disrupting any network, equipment, or server connected to or used to provide the Platform;
- (f) perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, accessing any other Platform account without permission, or falsifying your age or date of birth;
- (g) sell or otherwise transfer the access granted under these Terms or any Materials (as defined in Section 5) or any right or ability to view, access, or use any Materials;

- (h) access or use the Platform or any portion thereof via automated or partially automated means (including via scraping or robots) in order to collect information (including CK-12 Curriculum Materials) from or relating to the Platform, CK-12 or any other website owned or operated by CK-12;
- (i) access or use the Platform or any portion thereof in order to build or train artificial intelligence or machine learning models or algorithms;
- (j) access the Platform if your right to access the Platform has previously been terminated; or
- (k) attempt to do any of the acts described in this Section 10 or assist or permit any person in engaging in any of the acts described in this Section 10.

11. Copyright and Intellectual Property Protection. We comply with the provisions of the Digital Millennium Copyright Act applicable to Internet service providers (17 U.S.C. §512, as amended). Please review our [DMCA Notice](#) (the “**DMCA Notice**”). The DMCA Notice is incorporated by this reference into, and made a part of, these Terms.

12. Term, Termination, and Modification of the Platform

12.1 Term. These Terms are effective beginning when you accept the Terms or first download, install, access, or use the Platform, and ending when terminated as described in Section 12.2.

12.2 Termination. If you violate any provision of these Terms, your authorization to access the Platform and these Terms automatically terminates. In addition, CK-12 may, at its sole discretion, terminate these Terms or your account on the Platform, or suspend or terminate your access to the Platform, at any time for any reason or no reason, with or without notice. You may terminate your account and these Terms at any time by contacting customer service at support@ck12.org.

12.3 Effect of Termination. Upon termination of these Terms: (a) your license rights will terminate and you must immediately cease all use of the Platform; (b) you will no longer be authorized to access your account or the Platform; (c) you must pay CK-12 any unpaid amount that was due prior to termination; and (d) all payment obligations accrued prior to termination and Sections 4.2, 4.3, 4.4, 5, 8.2, 8.3, 12.3, 13, 14, 15, 16 and 17 will survive.

12.4 Modification of the Platform. CK-12 reserves the right to modify or discontinue the Platform at any time (including by limiting or discontinuing certain features of the Platform), temporarily or permanently, without notice to you. CK-12 will have no liability for any change to the Platform or any suspension or termination of your access to or use of the Platform.

13. Indemnity. To the fullest extent permitted by law, you are responsible for your use of the Platform, and you will defend and indemnify CK-12, its affiliates and their respective shareholders, directors, managers, members, officers, employees, consultants, and agents (together, the “**CK-12 Entities**”) from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including attorneys’ fees and costs, arising out of or connected with: (a) your unauthorized use of, or misuse of, the Platform; (b) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any

matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

14. Disclaimers; No Warranties

14.1 THE PLATFORM AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE PLATFORM ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. CK-12 DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE PLATFORM AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE PLATFORM, INCLUDING: (a) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (b) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. CK-12 DOES NOT WARRANT THAT THE PLATFORM OR ANY PORTION OF THE PLATFORM, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE PLATFORM, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND CK-12 DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

14.2 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE PLATFORM OR CK-12 ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE PLATFORM WILL CREATE ANY WARRANTY REGARDING ANY OF THE CK-12 ENTITIES OR THE PLATFORM THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE PLATFORM AND YOUR DEALING WITH ANY OTHER PLATFORM USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE PLATFORM AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY OR ANY LOSS OF DATA, INCLUDING USER CONTENT.

14.3 THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS IN THIS SECTION 14 APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. CK-12 does not disclaim any warranty or other right that CK-12 is prohibited from disclaiming under applicable law.

15. Limitation of Liability

15.1 TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE CK-12 ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE PLATFORM OR ANY MATERIALS OR CONTENT ON THE PLATFORM, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY CK-12 ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

15.2 EXCEPT AS PROVIDED IN SECTION 16.6 AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE CK-12 ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE PLATFORM OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF: (a) THE AMOUNT YOU HAVE PAID TO CK-12 FOR ACCESS TO AND USE OF THE PLATFORM IN THE 12 MONTHS PRIOR TO THE EVENT OR CIRCUMSTANCE GIVING RISE TO CLAIM AND (b) US\$100.

15.3 EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER

PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 15 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

16. Dispute Resolution and Arbitration

- 16.1 **Generally.** In the interest of resolving disputes between you and CK-12 in the most expedient and cost effective manner, and except as described in Section 16.2 and 16.4, you and CK-12 agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND CK-12 ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.
- 16.2 **Exceptions.** Despite the provisions of Section 16.1, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.
- 16.3 **Opt-Out.** If you do not wish to resolve disputes by binding arbitration, you may opt out of the provisions of this Section 16 within 30 days after the date that you agree to these Terms by sending a letter to CK-12 Foundation, Attention: Legal Department – Arbitration Opt-Out, 2300 Geng Road. Ste 150, Palo Alto, CA 94303 that specifies: your full legal name, the email address associated with your account on the Platform, and a statement that you wish to opt out of arbitration ("**Opt-Out Notice**"). Once CK-12 receives your Opt-Out Notice, this Section 16 will be void and any action arising out of these Terms will be resolved as set forth in Section 17.2. The remaining provisions of these Terms will not be affected by your Opt-Out Notice.
- 16.4 **Arbitrator.** Any arbitration between you and CK-12 will be settled under the Federal Arbitration Act and administered by the American Arbitration Association ("**AAA**") under its Consumer Arbitration Rules (collectively, "**AAA Rules**") as modified by these Terms. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at +1-800-778-7879, or by contacting CK-12. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.
- 16.5 **Notice of Arbitration; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail ("**Notice of Arbitration**"). CK-12's address for Notice is: CK-12 Foundation, Attention: Legal Department, 2300 Geng Road. Ste 150, Palo Alto, CA 94303. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("**Demand**"). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or CK-12 may commence an arbitration proceeding. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any settlement offer made by you or CK-12 must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by CK-12 in settlement of

the dispute prior to the award, CK-12 will pay to you the higher of: (a) the amount awarded by the arbitrator and (b) US\$10,000.

16.6 **Fees.** If you commence arbitration in accordance with these Terms, CK-12 will reimburse you for your payment of the filing fee, unless your claim is for more than US\$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in Santa Clara County, California, but if the claim is for US\$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse CK-12 for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

16.7 **No Class Actions.** YOU AND CK-12 AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and CK-12 agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

16.8 **Modifications to this Arbitration Provision.** If CK-12 makes any future change to this arbitration provision, other than a change to CK-12's address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to CK-12's address for Notice of Arbitration, in which case your account with CK-12 will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

16.9 **Enforceability.** If Section 16.7 or the entirety of this Section 16 is found to be unenforceable, or if CK-12 receives an Opt-Out Notice from you, then the entirety of this Section 16 will be null and void and, in that case, the exclusive jurisdiction and venue described in Section 17.2 will govern any action arising out of or related to these Terms.

17. Miscellaneous

17.1 **General Terms.** These Terms, together with the Privacy Policy, the DMCA Notice, the CK-12 Curriculum Materials License, and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and CK-12 regarding your use of the Platform. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of Section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word "including" means "including but not limited to." If any part of these Terms is held to be invalid or unenforceable, the

unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.

- 17.2 **Modification of these Terms.** We reserve the right to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, we may require that you accept the modified Terms in order to continue to use the Platform. Material modifications are effective upon your acceptance of the modified Terms. Immaterial modifications are effective upon publication. Except as expressly permitted in these Terms, these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.
- 17.3 **Governing Law.** These Terms are governed by the laws of the State of California without regard to conflict of law principles. You and CK-12 submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Santa Clara County, California for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Platform from our offices in California, and we make no representation that Materials included in the Platform are appropriate or available for use in other locations.
- 17.4 **Privacy Policy.** Please read the [CK-12 Privacy Policy](#) (the “**Privacy Policy**”) carefully for information relating to our collection, use, storage, and disclosure of your personal information. The CK-12 Privacy Policy is incorporated by this reference into, and made a part of, these Terms.
- 17.5 **Additional Terms.** Your use of the Platform is subject to all additional terms, policies, rules, or guidelines applicable to the Platform or certain features of the Platform that we may post on or link to from the Platform (the “**Additional Terms**”). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.
- 17.6 **Consent to Electronic Communications.** By using the Platform, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
- 17.7 **Contact Information.** The Platform is offered by CK-12 Foundation, located at 2300 Geng Road, Ste 150, Palo Alto, CA 94303. You may contact us by sending correspondence to that address or by emailing us at legal@ck12.org.
- 17.8 **Notice to California Residents.** If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Platforms of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at +1-800-952-5210 in order to resolve a complaint regarding the Platform or to receive further information regarding use of the Platform.
- 17.9 **No Support.** We are under no obligation to provide support for the Platform. In instances where we may offer support, the support will be subject to published policies.

17.10 **International Use.** The Platform is intended for visitors located within the United States. We make no representation that the Platform is appropriate or available for use outside of the United States. Access to the Platform from countries or territories or by individuals where such access is illegal is prohibited.

18. **Notice Regarding Apple.** This Section 18 only applies to the extent you are using our mobile application on an iOS device. You acknowledge that these Terms are between you and CK-12 only, not with Apple Inc. (“Apple”), and Apple is not responsible for the Service or the content thereof. Apple has no obligation to furnish any maintenance and support services with respect to the Service. If the Service fails to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the mobile application to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Service. Apple is not responsible for addressing any claims by you or any third party relating to the Service or your possession and/or use of the Service, including: (a) product liability claims; (b) any claim that the Service fails to conform to any applicable legal or regulatory requirement; or (c) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Service and/or your possession and use of the Service infringe a third party’s intellectual property rights. You agree to comply with any applicable third party terms when using the Service. Apple and Apple’s subsidiaries are third party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary of these Terms. You hereby represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.